

**252 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-29257 of 2015
Date of decision : 03.08.2016

Durgesh Kumar

...Petitioner(s)

Versus

UT, Chandigarh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. V.S. Rana, Advocate,
for the petitioner(s).

Mr. J.S. Toor, Addl. P.P,
for respondent No. 1.

Mr. D.R. Bansal, Advocate,
for respondent Nos. 2 to 4.

JITENDRA CHAUHAN, J.

By filing this petition under Section 482 CrPC, the petitioner lays challenge to the order dated 04.06.2014 passed by the learned Judicial Magistrate, First Class, Mohali (Annexure P-7) whereby the complaint filed by the petitioner was dismissed; and the order dated 15.07.2015 passed by Additional Sessions Judge, Chandigarh Annexure P-8 vide which the revision filed by the petitioner was also dismissed.

In brief, the complainant-petitioner filed a criminal complaint before the Court of Judicial Magistrate, First Class Mohali.

The case of the complainant as mentioned in the judgment passed by the trial Court is as under:-

“In brief the version of the complaint is that the deceased Rattan Lal @ Rachna/father of the complainant was having the landed property in village Maloya, U.T Chandigarh. The estate of the deceased Rattan Lal was inherited by his sons namely Ram Parkash, Bhagwan Dass, Durgesh Kumar Raj Kumar, Amit Kumar. The complainant and the accused no.1 and 3 are the sons of late Sh.Rattan Lal. To this effect the mutation no.5092 was sanctioned by the Assistant Collector IInd Grade Chandigarh. The land of the father of the complainant is comprised in Khewat no.77, 262, 269, 270, 273, 274, 275, 277, 278, 280, 281, 282, 283, 284, 355, and 261, Khatouni no.115, 367, 368, 369, 378, 379, 380, 392, 393, 394, 395, 396, 398, 399, 400, 401, 402, 404, 461, 491, 492, Khasara No.46//1/1 (0-11), 39//12/5(0-1), 45//5/5/2 (0-15), 48//24/1/2(3- 0), 55//4/2(3-19), 5/1(3-11), 48//6/2(1-1), 24/1 (0-18), 15/3(4-8), 49//10(8-0), 11(8-0), 20(8-0), 146(0-11), 147 (0-11), 39//12/17(0-3), 12/20 (0-3), 45//4/5/2(0-6), 4/6/2(0-3), 4/4/2 (0-5), 24/2/1(2-16), 45//31(1-4), 45//29 (1-2), 125 (0-9), 40//16/3 (0-10), 16/4 (0-10), 6//5/1 (7-16), 39//20/3 (0-7), 20/4 (0-9), 111 (0-11), 39//21/5 (1-0), 40//13/1(3-4), 5//1/2/2 (0-11), 2/1/2 (1-18), 9/2 (3-8), 10/1 (4-12), 11/2 (4-10), 12/1 (0-15), 25(5-15), 40//16/6 (1-17) 13//5/1(2-11), 4//19/2, (4-0) 22(7-16), 23/1 (1-5), 16/1 (8-0), 2(8- 0), 3/1(6-2), 10(8-0), 21//3(6-5), 6/2(1-17), 7(3-7), 4//21(8-0), 25/4 (1-0), 13//23 (5-17). The accused no.1 is having the legal knowledge and the complainant and his brother were

illiterate persons. So after the death of the father of the complainant, accused no. 1 has started cheating the complainant and his brothers by making the false representation to them and prepared the false Family Settlement dated 10.12.1992 and got changed the revenue entries in the revenue record in Village Maloya by concealment of the facts and got sanctioned the Mutation No.6219 from the Assistant Collector IInd Grade Chandigarh behind the back of the complainant and his brothers. The accused no.1 has taken all the benefit of the property of the complainant and his brothers by playing fraud. The accused no.1 has taken the signature of the complainant on the blank paper and started using the same. The accused no.1 has changed all the revenue record of the land of the complainant and the land has got mutated in his name. The land of Khsara no.111(0-11) was also got mutated in favour of Kiran Saini/accused no.2 (who is the wife of the accused no.1). The accused has transferred the land of the complainant and his brothers in their name by making false personation. Due to this 3 Durgesh vs Ram Parkash fact complainant and his brother has suffered the loss of his property and loss of money. The value of the property was Rs.20 crore which was transferred by the accused in their name. The accused no.2 was not having any share in the land of the complainant. The accused no.2 has taken all the benefit in her favour by misrepresenting the fact. When the complainant and his brother has took the

record of their land then this fact has come to their knowledge that the accused had sold their land and changed the revenue entries in their favour. The complainant and his brother never executed any sale deed/transfer deed in favour of the accused no.2. The accused no.1 has fraudulently got executed General Power of Attorney of the complainant and his brother in his favour by false representation, vide deed no.76, dated 24.9.1992. The fact of the General Power of Attorney has come to the knowledge of the complainant in the month March 2009 and got the same revoked vide cancellation deed dated 9.3.2009. The accused no.1 has also taken the benefit of this illegal document and sold the property of the complainant and his brother and received the consideration amount of the share of the complainant. The accused never told this fact to the complainant at any time nor gave the consideration amount. The accused no.1 has sold the shares of the complainant's land to Sukh Pal and Kamala Devi vide sale deed no.3560, dated 6.12.1999 to the land comprised in Khasara no.4//19/2, (4-0) 22 (7- 16), 23/1 (1-5), 16//1 (8-0), 2(8-0), 3/1(6-2), 10 (8-0), 4//21(8-0), 21//3(6-5) situated at Village Maloya UT Chandigarh in this transaction the accused no.1 had sold 9-4 Kanal land. The General Power of Attorney is 4 Durgesh vs Ram Parkash not the genuine document in the eyes of law because the accused no.3 was minor at the time of alleged execution of the documents nor the accused no.3 was having any right to entered into contract.

The date of birth of accused no.3 was 3/10/1975.. The accused no.1 had also sold the land of the complainant comprised in Khasara no.21//3 (6-5), 6/2(1-17), 7(3-7), 13//23 (5-17) situated at village Maloya to Santosh Kumari wife of Shri Rajpal vide sale deed no.1014 dated 10.7.1995. In this transaction the accused no.1 has transferred the share of the complainant in his absence and got the monetary benefits in his favour and received the consideration amount from the purchaser. The alleged family settlement was executed by Smt. Gurdev Kaur, Ram Parkash, Amit Kumar, Durgesh Kumar Raj Kumar and Bhagwant Dass alias Baggu. But the contents of the alleged family settlement shows that land was also granted to the accused no.2 Kiran Saini who was not the party in the alleged family settlement nor her name was recorded as co-sharer in the revenue record earlier to this family settlement nor Smt. Gurdev Kaur was the co-sharer. The accused no.1 has also sold the shop no.17 Sector 26 Chandigarh on the basis of the illegal forged document and caused monetary loss to the complainant and his brothers all them were also having the share in that property. The accused no.1 had played the fraud with the complainant to dispose off his property and got the monetary benefit. The illegal act of the accused no.1 has caused the monetary loss well as loss of their property. The accused no.3 has filed the suit titled as “Amit Kumar Vs Durgesh Kumar and other” which is pending before court of Shri Ranjiv Kumar, CJJD,

Chandigarh. The complainant has also filed a suit against the accused titled as “Durgesh Kumar and others versus Kiran Saini etc” and “Durgesh Kumar versus Ram Parkash” which are pending before the Courts of Sh.Pritpal Singh and Smt. Anupamish Modi, Civil Judge (Jr. Division), Chandigarh. No action was taken by the police. Hence, the present complaint.”

Thereafter, the complainant led his preliminary evidence. After the preliminary evidence, the arguments were heard and the Magistrate vide impugned order dated 04.06.2014 dismissed the complaint and declined to issue process against the accused.

Feeling dissatisfied, the complainant filed a revision before Additional Sessions Judge, Chandigarh. Learned Additional Sessions Judge, vide judgment dated 15.07.2015 dismissed the revision.

Learned counsel for the petitioner contends that although there is reliable and cogent evidence which was sufficient for summoning the respondent-accused, yet the learned Magistrate misdirected himself while dismissing the complaint dated 04.06.2014. It is further contended that for the purpose of summoning the accused, only prima facie case is to be seen and the truthfulness or the falsity of the allegations are not to be gone into at the stage of summoning.

Cautioning against issuing of process so that it should not be an instrument in the hands of the private complainant as vendetta to

harass the person needlessly, Hon'ble the Apex Court in **Punjab**

National Bank and others Vs. Surendra Prasad Sinha, 1993 Supp.**(1) SCC 499** held that

“It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and host of officer. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At this stage, the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and

laid complaint against the appellants without any prima facie case to harass them from vendetta.”

Perusal of the impugned orders reveals that the trial Magistrate has dismissed the complaint on the ground that the complainant has failed to prove that on which date the alleged fabrication took place. The complainant has failed to specify the dates on which false signatures of the complainant were taken by the accused no. 1. The complainant has failed to show how the family settlement dated 10.12.1992 is false. The allegations levelled by the complainant are vague and general in nature . There should be at least some evidence to summon the accused. The liberty of a person is of paramount consideration and the same cannot be disturbed in a fanciful manner. The complainant has not led evidence worth the name to point out the guilt of the accused.

Consequently, this Court does not find any infirmity or illegality in the judgments passed by the Courts below.

Accordingly, the present petition is dismissed.

03.08.2016

sumit sri

**(JITENDRA CHAUHAN)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes / No
Yes / No**